



University Senate CHARGE

Date:	November 16, 2012
To:	Jason Speck Chair, Student Conduct Committee
From:	Martha Nell Smith  Chair, University Senate
Subject:	Code of Student Conduct Expansion of Jurisdiction
Senate Document #:	12-13-26
Deadline:	March 29, 2013

The Senate Executive Committee (SEC) requests that the Student Conduct Committee review the attached proposal entitled, “Code of Student Conduct Expansion of Jurisdiction.”

The University of Maryland Code of Student Conduct (V-1.00(B)) sets forth disciplinary regulations to give students notice of prohibited conduct at the University. The Code of Student Conduct does not extend to student behavior off-campus unless it is a criminal offense resulting in conviction. However, the Department of Public Safety (DPS) has plans to expand its jurisdiction off-campus in order to increase student safety. The SEC requests that the Student Conduct Committee review whether the Code of Student Conduct should be amended to cover incidents within the expanded off-campus jurisdiction planned by the Department of Public Safety.

Specifically, we ask that you:

1. Review the University of Maryland Code of Student Conduct V-1.00(B).
2. Consult with a representative from the University’s Office of Student Conduct.
3. Consult with a representative of the Department of Public Safety regarding its plans for expanded jurisdiction.
4. Consult with the Senate Student Affairs Committee regarding the potential impact that any changes to the code would have on students at the University.
5. Review data regarding the number of off-campus incidents that were not considered to be criminal offenses over the past five years.

6. Review the jurisdiction of codes of student conduct at our peer institutions.
7. Consult with the University's Office of Legal Affairs.
8. If appropriate, recommend whether the University of Maryland Code of Student Conduct V-1.00(B) should be revised to expand its jurisdiction. Any recommendation for changes should include specific definitions of what is meant by the term "off-campus" and the types of offenses and sanctions that would be affected by an expansion in jurisdiction.

We ask that you submit your report and recommendations to the Senate Office no later than March 29, 2013. If you have questions or need assistance, please contact Reka Montfort in the Senate Office, extension 5-5804.



University Senate PROPOSAL FORM

Name:	Andrea Goodwin
Date:	10/23/12
Title of Proposal:	Code of Student Conduct Expansion of Jurisdiction
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Unit/Department/College:	Director, Office of Student Conduct
Constituency (faculty, staff, undergraduate, graduate):	Staff
Description of issue/concern/policy in question:	<p>There is growing concern over the limitations of the University's current <i>Code of Student Conduct</i> to address certain types of misconduct off-campus, most specifically acts of hazing and violence.</p> <p>Furthermore the Department of Public Safety (DPS) is working toward increasing UM student safety off-campus and reducing crime off-campus. The DPS have outlined a three-phase plan that includes increased jurisdiction off-campus to increase student safety and alleviate some of the community's concerns regarding student behavior off-campus such as public intoxication, large parties, vandalism, & major noise complaints.</p> <p>Currently the University's <i>Code of Student Conduct</i> does not extend to behavior off-campus unless the behavior is a criminal offense off campus, resulting in conviction, if such an offense would constitute a violation of this <i>Code</i> had it occurred on University premises or if the behavior constitutes rioting, assault, theft, vandalism, fire setting, or other serious misconduct related to a University-sponsored event, occurring on –or off-campus, that results in harm to persons or property or otherwise poses a threat to the stability of the campus or campus community may result in disciplinary action regardless of the existence, status, or outcome of any criminal charges in a court of law related to misconduct associated with a University-sponsored event (<i>Code of Student Conduct</i>, part 9(d)).</p>

Description of action/changes you would like to see implemented and why:	On behalf of the Office of Student Conduct, I request that the University amend the <i>Code of Student Conduct</i> to extend jurisdiction to allow the University to respond to misconduct off-campus.
Suggestions for how your proposal could be put into practice:	Attached is a copy of the <i>Code of Student Conduct</i> with suggested amendments.
Additional Information:	

Please send your completed form and any supporting documents to senate-admin@umd.edu or University of Maryland Senate Office, 1100 Marie Mount Hall, College Park, MD 20742-7541. Thank you!

V-1.00(B) UNIVERSITY OF MARYLAND CODE OF STUDENT CONDUCT

Approved by the Board of Regents January 25, 1980; amended effective September 4, 1990; December 18, 2001; April 22, 2004; November 18, 2005; April 5, 2006; March 10, 2011; January 17, 2012

Note: Different procedures and penalties are applicable in cases involving allegations of academic dishonesty. Please refer to the *Code of Academic Integrity*, available from the Office of Student Conduct (301-314-8204).

Footnotes which appear throughout the *Code of Student Conduct* refer to the Annotations listed at the end of this appendix.

RATIONALE

1. The primary purpose for the imposition of discipline in the University setting is to protect the campus community. Consistent with that purpose, reasonable efforts will also be made to foster the personal and social development of those students who are held accountable for violations of University regulations.¹

DEFINITIONS

2. When used in this *Code*:²
 - (a) The term “aggravated violation” means a violation which resulted or foreseeably could have resulted in significant damage to persons or property or which otherwise posed a substantial threat to the stability and continuance of normal University or University-sponsored activities.
 - (b) The term “distribution” means sale or exchange for personal profit.
 - (c) The term “group” means a number of persons who are associated with each other and who have not complied with University requirements for registration as an organization.
 - (d) The terms “institution” and “University” mean the University of Maryland, College Park.
 - (e) The term “organization” means a number of persons who have complied with University requirements for registration.
 - (f) The term “reckless conduct” means action which any member of the University community can be expected to know would create a clear risk of harm to persons or property, or would disrupt the lawful activities of others, including studying, teaching, research, and University administration.³
 - (g) The term “student” means a person taking or auditing courses at the institution either on a full- or part-time basis.⁴
 - (h) The term “University premises” means buildings or grounds owned, leased, operated, controlled or supervised by the University.

- (i) The term “weapon” means any object or substance designed to inflict a wound, cause injury, or incapacitate, including, but not limited to, all firearms, pellet guns, switchblade knives, knives with blades five or more inches in length.
- (j) The term “University-sponsored activity” means any activity on or off campus which is initiated, aided, authorized or supervised by the University.
- (k) The terms “will” or “shall” are used in the imperative sense.

INTERPRETATION OF REGULATIONS

- 3. Disciplinary regulations at the University are set forth in writing in order to give students general notice of prohibited conduct. The regulations should be read broadly and are not designed to define misconduct in exhaustive terms.

INHERENT AUTHORITY

- 4. The University reserves the right to take necessary and appropriate action to protect the safety and well-being of the campus community.⁵

STUDENT PARTICIPATION

- 5. Students are asked to assume positions of responsibility in the University judicial system in order that they might contribute their skills and insights to the resolution of disciplinary cases. Final authority in disciplinary matters, however, is vested in the University administration and in the Board of Regents.

STANDARDS OF DUE PROCESS

- 6. Students subject to expulsion, suspension⁶ or disciplinary removal from University housing⁷ will be accorded a conduct board hearing as specified in Part 31 of this *Code*. Students subject to less severe sanctions will be entitled to an informal disciplinary conference,⁸ as set forth in Parts 34 and 35.
- 7. The focus of inquiry in disciplinary proceedings shall be the guilt or innocence of those accused of violating disciplinary regulations. Formal rules of evidence shall not be applicable, nor shall deviations from prescribed procedures necessarily invalidate a decision or proceeding, unless significant prejudice to a student respondent or the University may result.⁹

VIOLATIONS OF LAW AND DISCIPLINARY REGULATIONS

- 8. Students may be accountable to both civil authorities and to the University for acts which constitute violations of law and of this *Code*.¹⁰ Disciplinary action at the University will normally proceed during the pendency of criminal proceedings

and will not be subject to challenge on the ground that criminal charges involving the same incident have been dismissed or reduced.

UNIVERSITY JURISDICTION

9. This Code shall apply to allegations of misconduct that occurs on University premises or at University-sponsored activities. Students may also be subject to disciplinary action for allegations of misconduct that occur off-campus and normally within the University Department of Public Safety concurrent jurisdiction that

- (a) poses a threat to the safety or health of any member of the University community; or,
- (b) is substantially disruptive and significantly affects a clear and distinct interest of the University as determined by the Director.

Among factors to be considered in determining off-campus jurisdiction shall include the seriousness of the misconduct, the substantive interest of the University affected, and availability of evidence or witnesses.

PROHIBITED CONDUCT

10. The following misconduct is subject to disciplinary action:

- (a) Intentionally or recklessly causing physical harm to any person on, or intentionally or recklessly causing reasonable apprehension of such harm.
- (b) Unauthorized use, possession or storage of any weapon.
- (c) Intentionally initiating or causing to be initiated any false report, warning or threat of fire, explosion or other emergency.
- (d) Off-campus misconduct which:
 - i. is deemed a criminal offense, as defined by state or federal law, if such an offense would constitute a violation of this Code had it occurred on University premises. No student involved in a misdemeanor offense under this section shall be subject to expulsion or full suspension unless the offense constitutes an “aggravated violation” as defined in Part 2(a) of this Code. The University shall not pursue disciplinary action when a non-aggravated misdemeanor does not pose a threat to the stability of the campus or campus community;
 - ii. rioting, assault, theft, vandalism, fire setting, or other serious misconduct related to a University-sponsored event, occurring on – or off-campus, that results in harm to persons or property or otherwise poses a threat to the stability of the campus or campus community may result in disciplinary action regardless of the existence, status, or outcome of any criminal charges in a court of

Andrea Goodwin 10/23/12 10:54 AM

Comment [1]: This entire section was added.

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Comment [2]: References to University premises were removed throughout this section to reflect extended jurisdiction off-campus.

Andrea Goodwin 10/23/12 10:55 AM

Comment [3]: Beginning in this section the Code (and we as all references to sections throughout the document) was renumbered to address the necessary changes due to the addition of the section on Jurisdiction added above.

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Comment [4]: The conviction requirement was removed.

law related to misconduct associated with a University-sponsored event.

- (e) Knowingly violating the terms of any disciplinary sanction imposed in accordance with this *Code*.
- (f) Intentionally or recklessly misusing or damaging fire safety equipment.
- (g) Unauthorized distribution or possession for purposes of distribution of any controlled substance or illegal drug¹¹.
- (h) Use or possession of any controlled substance or illegal drug.¹²
- (i) Intentionally furnishing false information to the University.
- (j) Making, possessing, or using any forged, altered, or falsified instrument of identification or University document.
- (k) Intentionally and substantially interfering with the freedom of expression of others.¹³
- (l) Theft of property or of services; knowing possession of stolen property.
- (m) Intentionally or recklessly destroying or damaging the property of others.
- (n) Engaging in disorderly or disruptive conduct which interferes with the activities of others, including studying, teaching, research, and University administration.*
- (o) Failure to comply with the directions of University officials, including campus police officers, acting in performance of their duties.
- (p) Violation of published University regulations or policies, as approved and compiled by the Vice President for Student Affairs.¹⁴ Such regulations or policies may include the residence hall contract, as well as those regulations relating to entry and use of University facilities, sale of alcoholic beverages, use of vehicles** and amplifying equipment, campus demonstrations, and misuse of identification cards.
- (q) Use or possession of any alcoholic beverage under the age of 21; knowingly providing alcoholic beverages to a person known to be under the age of 21. ***
- (r) Unauthorized use or possession of fireworks.

* The response of fire, police, or emergency personnel to a non-frivolous call, or action taken by them on their own initiative pursuant or non-pursuant to policy is not considered a disruption or reckless action within the meaning of this section.

** Parking and traffic violations may be processed in accordance with procedures established by the Vice President for Student Affairs.

*** This charge may be deferred under Part 30 of this *Code* consistent with procedures outlined in the *Promoting Responsible Action in Medical Emergencies Policy*.

SANCTIONS

11. Sanctions for violations of disciplinary regulations consist of:

- (a) **EXPULSION:** permanent separation of the student from the University. Notification will appear on the student's transcript. The student will also be barred from the University premises (expulsion requires administrative review and approval by the President and may be altered, deferred or withheld).
 - (b) **SUSPENSION:** separation of the student from the University for a specified period of time. Permanent notification will appear on the student's transcript. The student shall not participate in any University-sponsored activity and may be barred from University premises. Suspended time will not count against any time limits of the Graduate School for completion of a degree. (Suspension requires administrative review and approval by the Vice President for Student Affairs and may be altered, deferred or withheld).
 - (c) **DISCIPLINARY PROBATION:** the student shall not represent the University in any extracurricular activity or run for or hold office in any student group or organization. Additional restrictions or conditions may also be imposed. Notification will be sent to appropriate University offices, including the Office of Campus Programs.
 - (d) **DISCIPLINARY REPRIMAND:** the student is warned that further misconduct may result in more severe disciplinary action.
 - (e) **RESTITUTION:** the student is required to make payment to the University or to other persons, groups, or organizations for damages incurred as a result of a violation of this *Code*.
 - (f) **OTHER SANCTIONS:** other sanctions may be imposed instead of or in addition to those specified in sections (a) through (e) of this part. For example, students may be subject to dismissal from University housing for disciplinary violations which occur in the residence halls. Likewise, students may be subject to restrictions upon or denial of driving privileges for disciplinary violations involving the use or registration of motor vehicles. Work or research projects may also be assigned.
12. Violations of sections (a) through (g) in Part 10 of this *Code* may result in expulsion from the University¹⁵, unless specific and significant mitigating factors are present. Factors to be considered in mitigation shall be the present demeanor and past disciplinary record of the offender, as well as the nature of the offense and the severity of any damage, injury, or harm resulting from it.
13. Violations of sections (h) through (l) in Part 10 of this *Code* may result in suspension from the University, unless specific and significant mitigating factors as specified in Part 12 are present.
14. Repeated or aggravated violations of any section of this *Code* may also result in expulsion or suspension or in the imposition of such lesser penalties as may be appropriate.

15. Any decision to impose a sanction less than suspension or expulsion for University-sponsored event-related misconduct as defined in Part 10(d)(ii) of this *Code* must be supported by written findings signed by the Vice President for Student Affairs. A student suspended under this section shall not be admitted to any other institution in the University of Maryland System during the term of the suspension. A student expelled under this section shall not be admitted to any other institution in the System for at least one year from the effective date of the expulsion.
16. Attempts to commit acts prohibited by this *Code* shall be punished to the same extent as completed violations.¹⁶
17. Penalties for off-campus misconduct shall not be more severe than for similar on-campus conduct.

INTERIM SUSPENSION¹⁷

18. The Vice President for Student Affairs or a designee may suspend a student for an interim period pending disciplinary proceedings or medical evaluation, such interim suspension to become immediately effective without prior notice, whenever there is evidence that the continued presence of the student on the University campus poses a substantial threat to him or herself or to others or to the stability and continuance of normal University functions.
19. A student suspended on an interim basis shall be given an opportunity to appear personally before the Vice President for Student Affairs or a designee within five business days from the effective date of the interim suspension in order to discuss the following issues only:
 - (a) the reliability of the information concerning the student's conduct, including the matter of his or her identity;
 - (b) whether the conduct and surrounding circumstances reasonably indicate that the continued presence of the student on the University campus poses a substantial threat to him or herself or to others or the stability and continuance of normal University functions.

OFFICE OF STUDENT CONDUCT

20. The Office of Student Conduct directs the efforts of students and staff members in matters involving student discipline. The responsibilities of the office include:
 - (a) Determination of the disciplinary charges to be filed pursuant to this *Code*.
 - (b) Interviewing and advising parties¹⁸ involved in disciplinary proceedings.
 - (c) Supervising, training, and advising all conduct boards.
 - (d) Reviewing the decisions of all conduct boards.¹⁹
 - (e) Maintenance of all student disciplinary records.

- (f) Development of procedures for conflict resolution.
- (g) Resolution of cases of student misconduct, as specified in Parts 34 and 35 of this *Code*.
- (h) Collection and dissemination of research and analysis concerning student conduct.
- (i) Submission of a statistical report each semester to the campus community, reporting the number of cases referred to the office, the number of cases resulting in disciplinary action, and the range of sanctions imposed.²⁰

CONDUCT PANELS

21. Hearings or other proceedings as provided in the *Code* may be held before the following boards or committees:
 - (a) **CONFERENCE BOARDS**, as appointed in accordance with Part 35 of this *Code*.
 - (b) **RESIDENCE BOARDS**, as established and approved by the Vice President for Student Affairs.²¹ Students residing in group living units owned, leased, operated or supervised by the University may petition the Vice President for authority to establish conduct boards. Such boards may be empowered to hear cases involving violations of the *Code*, as prescribed by the Vice President for Student Affairs.
 - (c) **THE CENTRAL BOARD** hears cases involving disciplinary violations which are not referred to Residence Boards or resolved in accordance with Parts 34 and 35 of this *Code*. The Central Board is composed of five students, including at least two graduate students when a graduate student case is being heard.
 - (d) **THE APPELLATE BOARD** hears appeals from Residence Boards, the Central Board, and ad hoc boards, in accordance with Part 44 of this *Code*. The Appellate Board is composed of five full-time students, including at least two graduate students.
 - (e) **AD HOC BOARDS** may be appointed by the Director of Student Conduct when a Conference Board, a Residence Board, the Central Board, the Appellate Board or the Senate Adjunct Committee are unable to obtain a quorum or are otherwise unable to hear a case.²² Each ad hoc board shall be composed of three members, including at least one student.
 - (f) **THE SENATE COMMITTEE ON STUDENT CONDUCT** hears appeals as specified in Part 43 of this *Code*. The committee also approves the initial selection of all conduct board members, except members of conference and ad hoc boards.²³

22. The presiding officer of each conduct board and of the Senate Adjunct Committee on Student Conduct may develop bylaws which are not inconsistent with any provision in this *Code*. Bylaws must be approved by the Director of Student Conduct.²⁴

SELECTION AND REMOVAL OF BOARD MEMBERS

23. Members of the various conduct boards are selected in accordance with procedures developed by the Director of Student Conduct.
24. Members of conference and ad hoc boards are selected in accordance with Parts 35 and 21(e), respectively.
25. Prospective members of the Central Board and the Appellate Board are subject to confirmation by the Senate Committee on Student Conduct.
26. Members of the Senate Committee on Student Conduct are selected in accordance with the bylaws of the University Senate.
27. Prior to participating in board or committee deliberations, new members of the Senate Committee on Student Conduct and all conduct boards, except conference and ad hoc boards, will participate in one orientation session by the Office of Student Conduct.
28. Student members of any conduct board or committee who are charged with any violation of this *Code* or with a criminal offense²⁵ may be suspended from their judicial positions by the Director of Student Conduct during the pendency of the charges against them. Students convicted for any such violation or offense may be disqualified from any further participation in the University judicial system by the Director of Student Conduct. Additional grounds and procedures for removal may also be set forth in the bylaws of the various conduct panels.

CASE REFERRALS

29. Any person²⁶ may refer a student or a student group or organization suspected of violating this *Code* to the Office of Student Conduct. Allegations of off-campus event-related misconduct must be supported by a report, statement, or accusation from a law enforcement agency in whose jurisdiction the misconduct is alleged to have occurred. Persons making such referrals are required to provide information pertinent to the case and will normally be expected to appear before a conduct board as the complainant.²⁷

DEFERRAL OF PROCEEDINGS

30. The Director of Student Conduct may defer disciplinary proceedings for alleged violations of this *Code* for a period not to exceed 90 days. Pending charges may be withdrawn thereafter, dependent upon the good behavior of the respondent. Students subject to conditional relief from disciplinary charges under the

Promoting Responsible Action in Medical Emergencies Policy may also be required to successfully complete an approved alcohol intervention program prior to the withdrawal of charges.

HEARING REFERRALS

31. Staff members in the Office of Student Conduct will review referrals to determine whether the alleged misconduct might result in expulsion, suspension, or disciplinary removal from University housing.²⁸ Students subject to those sanctions shall be accorded a hearing before the appropriate conduct board. All other cases shall be resolved in the Office of Student Conduct after an informal disciplinary conference, as set forth in Part 34 and 35 of this *Code*.
32. Students referred to a conduct board hearing may elect instead to have their case resolved in accordance with Parts 34 and 35. The full range of sanctions authorized by this *Code* may be imposed, although the right of appeal shall not be applicable.

BURDEN OF PROOF²⁹

33. Except as provided below, the burden of proof shall be upon the complainant, who must establish the guilt of the respondent by clear and convincing evidence³⁰. In disciplinary conferences and hearings under section 9(p) of this *Code* which allege violation of VI-1.30(A) UMCP Procedures on Sexual Assault and/or VI-1.20(A) University of Maryland Policy and Procedures on Sexual Harassment, the burden of proof shall be upon the complainant, who must establish the guilt of the respondent by a preponderance of the evidence³¹.

DISCIPLINARY CONFERENCES³²

34. Students subject to or electing to participate in a disciplinary conference in the Office of Student Conduct are accorded the following procedural protections:
 - (a) Written notice of charges at least three days prior to the scheduled conference.
 - (b) Reasonable access to the case file³³ prior to and during the conference.
 - (c) An opportunity to respond to the evidence against them and to call appropriate witnesses on their behalf.
 - (d) The option to be accompanied and assisted by a representative, who may be an attorney. Representatives have the right to make opening and closing statements, to advise their clients during the course of the proceedings, and to petition for recesses. All representatives are subject to the restrictions of Parts 37 and 38 of this *Code*.
35. Disciplinary conferences shall be conducted by the Director of Student Conduct or a designee.³⁴ Complex or contested cases may be referred by the Director to a

conference board, consisting of one member of the Central Board, one member of the Appellate Board, and a staff member in the Division of Student Affairs. Conference Board members shall be selected on a rotating basis by the Director of Student Conduct.

HEARING PROCEDURES

36. The following procedural guidelines shall be applicable in disciplinary hearings:
- (a) Respondents shall be given notice of the hearing date and the specific charges against them at least five days in advance and shall be accorded reasonable access to the case file, which will be retained in the Office of Student Conduct.
 - (b) The presiding officer of any board may subpoena witnesses upon the motion of any board member or of either party and shall subpoena witnesses upon request of the board advisor. Subpoenas must be approved by the Director of Student Conduct and shall be personally delivered or sent by certified mail, return receipt requested. University students and employees are expected to comply with subpoenas issued pursuant to this procedure, unless compliance would result in significant and unavoidable personal hardship or substantial interference with normal University activities.³⁵

If the Director of Student Conduct or his or her designee determines that a fair hearing cannot be held without the testimony of a particular witness, and, after good faith attempts are made, the witness either fails to or refuses to appear, the disciplinary hearing will be postponed until the witness agrees to appear or the charges will be dismissed.
 - (c) Respondents who fail to appear after proper notice will be deemed to have pleaded guilty to the charges pending against them.
 - (d) Hearings will be closed to the public, except for the immediate members of the parties' families and their representatives, if applicable. An open hearing may be held, at the discretion of the presiding officer, if requested by both parties.
 - (e) The presiding officer of each board shall exercise control over the proceedings to avoid needless consumption of time and to achieve the orderly completion of the hearing. Except as provided in section (o) of this Part, any person, including the respondent, who disrupts a hearing may be excluded by the presiding officer or by the board advisor.
 - (f) Hearings may be tape recorded or transcribed. If a recording or transcription is not made, the decision of the board must include a summary of the testimony and shall be sufficiently detailed to permit review by appellate bodies and by staff members in the Office of Student Conduct.
 - (g) Any party or the board advisor may challenge a board member on the grounds of personal bias. Board members may be disqualified upon

- majority vote of the remaining members of the board, conducted by secret ballot,³⁶ or by the Director of Student Conduct.
- (h) Witnesses shall be asked to affirm that their testimony is truthful and may be subject to charges of perjury, pursuant to Part 10(i) of this *Code*.
 - (i) Prospective witnesses, other than the complainant and the respondent, may be excluded from the hearing during the testimony of other witnesses. All parties, the witnesses, and the public shall be excluded during board deliberations.
 - (j) Formal rules of evidence shall not be applicable in disciplinary proceedings conducted pursuant to this *Code*.³⁷ The presiding officer of each board shall give effect to the rules of confidentiality and privilege, but shall otherwise admit all matters into evidence which reasonable persons would accept as having probative value in the conduct of their affairs. Unduly repetitious or irrelevant evidence may be excluded.³⁸
 - (k) Both parties shall be accorded an opportunity to question those witnesses who testify at the hearing.
 - (l) Affidavits shall not be admitted into evidence unless signed by the affiant and witnessed by a University employee, or by a person designated by the Director of Student Conduct.
 - (m) Board members may take judicial notice of matters which would be within the general experience of University students.³⁹
 - (n) Board advisors may comment on questions of procedure and admissibility of evidence and will otherwise assist in the conduct of the hearing. Advisors will be accorded all the privileges of board members, and the additional responsibilities set forth in this *Code*, but shall not vote. All advisors are responsible to the Director of Student Conduct and shall not be excluded from hearings or board deliberations by any board or by the presiding officer of any board.
 - (o) The Director of Student Conduct may appoint a special presiding officer to any board in complex cases or in any case in which the respondent is represented by an attorney. Special presiding officers may participate in board deliberations, but shall not vote.⁴⁰
 - (p) A determination of guilt shall be followed by a supplemental proceeding in which either party and the board advisor may submit evidence or make statements concerning the appropriate sanction to be imposed. The past disciplinary record⁴¹ of the respondent shall not be supplied to the board by the advisor prior to the supplementary proceeding.
 - (q) Final decisions of all conduct panels shall be by majority vote of the members present and voting. A tie vote will result in a recommended acquittal in an original proceeding. A tie vote in an appellate proceeding will result in an affirmation of the original decision.
 - (r) Final decisions of all boards, except conference boards, shall be accompanied by a brief written opinion.

ATTORNEYS AND REPRESENTATIVES

37. Representatives of both complainants and respondents in hearings pursuant to this *Code* have the right to call witnesses to testify, to question in person all witnesses who appear at the hearing, to voice timely objections, to make opening and closing statements, to petition for recesses in the proceedings and to zealously and lawfully assert their client's position under the *Code of Student Conduct*.⁴² All presenters and representatives who participate in disciplinary hearings and disciplinary conferences shall not:
- (a) Intentionally engage in conduct to disrupt a hearing;
 - (b) Intentionally attempt to improperly influence an officer of the Office of Student Conduct, a hearing advisor or member of a conduct board;
 - (c) Intentionally fail to obey a reasonably definite and specific order by a presiding officer;
 - (d) Knowingly make a false statement of material fact, law or representation of the *Code* to other participants in a hearing;
 - (e) Knowingly fail to disclose a material fact in a hearing when disclosure is necessary to avoid assisting a future criminal or fraudulent act;
 - (f) Knowingly offer false evidence, falsify evidence, counsel or induce witnesses to testify falsely, or offer improper inducements to testify;
 - (g) Recklessly and unlawfully obstruct another party's access to evidence, or alter, destroy or conceal material not protected by privilege having potential evidentiary value;
 - (h) If the representative is an attorney, otherwise fail to follow any obligations under relevant standards of professional responsibility in matters pertaining to the representation.
38. (a) Any participant in a hearing may refer complaints about suspected violations of the provisions of Part 37 of this *Code* to the Senate Committee on Student Conduct.
- (b) Within a reasonable time after such referral, the chairperson of the Senate Committee on Student Conduct will review the complaint. After review the chairperson shall dismiss complaints which are anonymous, manifestly frivolous, which cannot be reasonably construed to allege a violation of Part 37, or are based on hearsay alone. Those which are not dismissed will be referred to the full Committee which will convene a hearing no sooner than 10 business days after sending a copy of the evidence presented to the representative named in the complaint. The hearing shall be held under the relevant rules and procedures governing disciplinary hearings outlined in Parts 35-37 of this *Code*.
- (c) A client shall not be compelled either directly or through their representative to waive the attorney-client privilege.
- (d) Representatives found responsible for violations of the provisions of Part 37 may be suspended from the privilege of representation for such time as the Committee may deem appropriate. In addition, the Committee may

refer their findings to the Attorney Grievance Commission, or other appropriate disciplinary body.

- (e) Appeals from decisions of the Senate Committee on Student Conduct regarding violations under Part 37 may be made by parties found responsible. Appeals should be made in writing to the Senate Campus Affairs Committee within 10 business days of receipt of the letter notifying the party of the decision. Appeals will be conducted in accordance with the standards for the hearing of student disciplinary appeals. Decisions of the Campus Affairs Committee regarding these appeals shall be final.

STUDENT GROUPS AND ORGANIZATIONS

- 39. Student groups and organizations may be charged with violations of this *Code*.
- 40. A student group or organization and its officers may be held collectively⁴³ or individually responsible when violations of this *Code* by those associated with⁴⁴ the group or organization have received the tacit or overt consent or encouragement of the group or organization or of the group's or organization's leaders, officers, or spokespersons.
- 41. The officers or leaders or any identifiable spokespersons⁴⁵ for a student group or organization may be directed by the Vice President for Student Affairs or a designee to take appropriate action designed to prevent or end violations of this *Code* by the group or organization or by any persons associated with the group or organization who can reasonably be said to be acting in the group's or organization's behalf. Failure to make reasonable efforts to comply with the Vice President's directive shall be considered a violation of Part 10(p) of this *Code*, both by the officers, leaders or spokespersons for the group or organization and by the group or organization itself.
- 42. Sanctions for group or organization misconduct may include revocation or denial of recognition or registration, as well as other appropriate sanctions, pursuant to Part 11(f) of this *Code*.

APPEALS

- 43. Except as provided below, any determination made pursuant to this *Code* resulting in expulsion or suspension⁴⁶ may be appealed by the respondent to the Senate Committee on Student Conduct. Appeals regarding violations of VI-1.30(A) UMCP Procedures on Sexual Assault and/or VI-1.20(A) University of Maryland Policy and Procedures on Sexual Harassment may be made by either party.⁴⁷ The Senate Committee shall also hear appeals from denials of petitions to void disciplinary records, pursuant to Part 53 of this *Code*.

44. Except as provided below, final decisions of residence boards, the Central Board and ad hoc boards, not involving the sanctions specified in Part 43, may be appealed by the respondent to the Appellate Board.⁴⁸ Appeals regarding violations of VI-1.30(A) UMCP Procedures on Sexual Assault and/or VI-1.20(A) University of Maryland Policy and Procedures on Sexual Harassment may be made by either party.⁴⁹
45. Requests for appeals must be submitted in writing to the Office of Student Conduct within seven business days from the date of the letter providing notice of the original decision. Failure to appeal within the allotted time will render the original decision final and conclusive.⁵⁰
46. A written brief in support of the appeal must be submitted to the Office of Student Conduct within 10 business days from the date of the letter providing notice of the original decision. Failure to submit a written brief within the allotted time will render the decision of the lower board final and conclusive.⁵¹
47. Appeals shall be decided upon the record of the original proceeding and upon written briefs submitted by the parties. De novo hearings shall not be conducted.
48. Appellate bodies may:
 - (a) Affirm the finding and the sanction imposed by the original board.
 - (b) Affirm the finding and reduce, but not eliminate, the sanction, in accordance with Parts 49 and 49(a).
 - (c) Remand the case to the original board, in accordance with Parts 48 and 48(b).
 - (d) Dismiss the case, in accordance with Parts 9 and 50(c).
49. Deference shall be given to the determinations of lower boards.⁵²
 - (a) Sanctions may only be reduced if found to be grossly disproportionate to the offense.
 - (b) Cases may be remanded to the original board if specified procedural errors or errors in interpretation of University regulations were so substantial as to effectively deny the respondent a fair hearing, or if new and significant evidence became available which could not have been discovered by a properly diligent respondent before or during the original hearing.⁵³ On remand, no indication or record of the previous conduct hearing will be introduced or provided to members of the new conduct panel, except to impeach contradictory testimony at the discretion of the presiding officer. The board will be directed by the committee not to repeat the specified errors that caused the remand.
 - (c) Cases may be dismissed only if the finding is held to be arbitrary and capricious.⁵⁴

- (d) Decisions of the Appellate Board shall be recommendations to the Director of Student Conduct.⁵⁵ Decisions of the Senate Committee on Student Conduct shall be recommendations to the Vice President for Student Affairs. Decisions altering the determinations of all hearing boards and the Senate Committee on Student Conduct shall be accompanied by a brief written opinion.
50. The imposition of sanctions will normally be deferred during the pendency of appellate proceedings, at the discretion of the Director of Student Conduct.

DISCIPLINARY FILES AND RECORDS

51. Case referrals may result in the development of a disciplinary file in the name of the respondent, which shall be voided if the respondent is found innocent of the charges.⁵⁶ The files of respondents found guilty of any of the charges against them will be retained as a disciplinary record for three years from the date of the letter providing notice of final disciplinary action.⁵⁷ Disciplinary records may be retained for longer periods of time or permanently, if so specified in the sanction.
52. Disciplinary records may be voided⁵⁸ by the Director of Student Conduct for good cause, upon written petition of respondents. Factors to be considered in review of such petitions shall include:
- (a) the present demeanor of the respondent.
 - (b) the conduct of the respondent subsequent to the violation.
 - (c) the nature of the violation and the severity of any damage, injury, or harm resulting from it.
53. Denials of petitions to void disciplinary records shall be appealable to the Senate Committee on Student Conduct, which will apply the standard of review specified in Part 51 and 52(c). The requirements for appeals as set forth in Part 44 and 45 shall be applicable.⁵⁹
54. Disciplinary records retained for less than 90 days or designated as “permanent” shall not be voided without unusual and compelling justification.⁶⁰

ANNOTATIONS

1. The University is not designed or equipped to rehabilitate or incapacitate persons who pose a substantial threat to themselves or to others. It may be necessary, therefore, to remove those individuals from the campus and to sever the institutional relationship with them, as provided in this *Code of Student Conduct* and by other University regulations.*

Any punishment imposed in accordance with the *Code* may have the value of discouraging the offender and others from engaging in future misbehavior. In cases of minor disciplinary violations, the particular form of punishment may also be designed to draw upon the educational resources of the University in order to bring about a lasting and reasoned change in behavior. The underlying rationale for punishment need not rest on deterrence or “reform” alone, however. A just punishment may also be imposed because it is “deserved” and because punishment for willful offenses affirms the autonomy and integrity of the offender. The latter concept was expressed by D.J.B. Hawkins in his essay “Punishment and Moral Responsibility” in 7 *Modern Law Review* 205:

The vice of regarding punishment entirely from the points of view of reformation and deterrence lies precisely in forgetting that a just punishment is deserved. The punishment of men then ceases to be essentially different from the training of animals, and the way is open for the totalitarian state to undertake the forcible improvement of its citizens without regard to whether their conduct has made them morally liable to social coercion or not. But merit and demerit, reward and punishment, have a different significance as applied to men and as applied to animals. A dog may be called a good dog or a bad dog, but his goodness or badness can be finally explained in terms of heredity and environment. A man, however, is a person, and we instinctively recognize that he has a certain ultimate personal responsibility for at least some of his actions. Hence merit and demerit, reward and punishment, have an irreducible individual significance as applied to men. This is the dignity and the tragedy of the human person.

A similar view was expressed by Justice Powell, dissenting in *Goss v. Lopez* (42 L. Ed. 2d 725, 745):

Education in any meaningful sense includes the inculcation of an understanding in each pupil of the necessity of rules and obedience thereto. This understanding is no less important than learning to read and write. One who does not comprehend the meaning and necessity of discipline is handicapped not merely in his education but throughout his subsequent life. In an age when the home and church play a diminishing role in shaping the character and value judgments of the young, a heavier responsibility falls upon the schools. When an immature student merits censure for his conduct, he is rendered a disservice if appropriate sanctions are not applied.

2. An effort is made in the *Code* to use a simplified numbering and lettering system, without use of Roman numerals or subsets of letters and numbers. Any part of the *Code* can be found by reference to one number and one letter [e.g., Part 10a explains the meaning of expulsion].

3. Culpable conduct should include conscious acts posing a substantial risk or harm to others (e.g. throwing a heavy object out a tenth floor window above a sidewalk). If the act itself, however, is unintended (e.g. one is distracted by a noise while climbing a flight of stairs and drops a heavy object) the individual may have failed to use reasonable care, but is not normally deserving of the moral stigma associated with a “conviction” for a disciplinary offense.
4. Former students may be charged for violations which allegedly occurred during their enrollment at the University.
5. Colleges and universities are not expected to develop disciplinary regulations which are written with the scope of precision of a criminal *Code*. Rare occasions may arise when conduct is so inherently and patently dangerous to the individual or to others that extraordinary action not specifically authorized in the rules must be taken.
6. The terms “suspension” and “interim suspension” are to be distinguished throughout the *Code* and are not interchangeable.
7. Disciplinary removal from University housing should be distinguished from administrative removal for violations of the residence contract. The latter does not leave students with a disciplinary record and does not come under the purview of this *Code*.
8. The standard set forth here represents the minimal procedural protection to be accorded to students charged with most disciplinary violations. Students who are subject to lengthy suspensions or to expulsion may be entitled to more formal procedures, including a hearing with a right to cross-examine the witnesses against them. *Goss v. Lopez*, 419 U.S. 565 (1975).
9. The Supreme Court has recently rejected the theory that state schools are bound by principles of federal administrative law requiring agencies to follow their own regulations. *Board of Curators, University of Missouri v. Horowitz* 55 L.Ed 2d 124, 136. See, generally, “Violation by Agencies of Their Own Regulations” 87 *Harvard Law Review* 629 (1974).
10. Respondents in disciplinary proceedings may be directed to answer questions concerning their conduct. Students who refuse to answer on grounds of the Fifth Amendment privilege may be informed that the hearing panel could draw negative inferences from their refusal which might result in their suspension or dismissal. If the student then elects to answer, his/her statements could not be used against him/her in either state or federal court. *Garrity v. New Jersey*, 385 U.S 493 (1967). See also *Furutani v. Ewigleben*, 297 F. Supp. 1163 (N.D.Cal. 1969).

11. The “controlled substances” or “illegal drugs” prohibited in this section are set forth in Schedules I through V in the Maryland Criminal Law Article 5-401 through 5-406 and 5-708 (Inhalants).
12. See Annotation 11.
13. Colleges and universities should be a forum for the free expression of ideas. In the recent past, however, unpopular speakers have been prevented from addressing campus audiences by students who effectively “shouted them down.” Both Yale and Stanford Universities have treated such actions (which are to be distinguished from minor and occasional heckling) as serious disciplinary violations. See the “Report from the Committee on Freedom of Expression at Yale University” which is available in the Office of Student Conduct.

The following language from the Yale report may be used to elaborate upon the intent and scope of Part 10(k) of this *Code*.

- A. “There is no right to protest within a University building in such a way that any University activity is disrupted. The administration, however, may wish to permit some symbolic dissent within a building but outside the meeting room, for example, a single picket or a distributor of handbills.”
 - B. “[A] member of the audience may protest in silent, symbolic fashion, for example, by wearing a black arm band. More active forms of protest may be tolerated such as briefly booing, clapping hands or heckling. But any disruptive activity must stop [and not be repeated] when the chair or an appropriate University official requests silence.
 - C. “Nor are racial insults or any other ‘fighting words’ a valid ground for disruption or physical attack... The banning or obstruction of lawful speech can never be justified on such grounds as that the speech or the speaker is deemed irresponsible, offensive, unscholarly, or untrue.”
14. A compilation of published regulations which have been reviewed and approved by the Vice President shall be available for public inspection during normal business hours in the Office of Student Conduct.
 15. This Part and Parts 12 and 13 represent an attempt to give needed guidance to those who are assessing penalties. Moreover the direction of the guidance is toward imposition of more severe disciplinary sanctions in serious cases. Nonetheless, the language concerning “mitigating factors” is broad enough to give decision-makers considerable leeway to “do justice,” depending upon the facts in each case. The burden of establishing facts in mitigation should, of course, be upon the respondent.

16. There does not seem to be any rational basis for imposing less severe penalties for attempts than for completed violations. The authors of the *Model Penal Code*, for example, have written that:

To the extent that sentencing depends upon the antisocial disposition of the actor and the demonstrated need for a corrective action, there is likely to be little difference in the gravity of the required measures depending on the consummation or the failure of the plan.

See LaFave, *Criminal Law Treatise* p. 453.

17. These procedures are analogous to those found in the “emergency” disciplinary rules adopted by the Board of Regents in 1971 and are consistent with the formal opinion of the Maryland Attorney General on this subject, dated January 23, 1969. See also *Goss v. Lopez*, 419 U.S. 565 (1975).

Nothing in this provision would prohibit the Vice President from modifying the terms of an interim suspension, so long as the hearing requirement specified in Part 18 was met. For example, a suspended student might be allowed to enter University premises solely for the purpose of attending classes.

18. Staff members in the Office of Student Conduct should endeavor to arrange a balanced presentation before the various conduct boards and may assist both complainants and respondents.
19. This language does not effect any change in previous policy concerning the powers of conduct boards. All board decisions, including those rendered by Conference Boards, shall be treated as recommendations.
20. See Annotation 1, supra. The deterrent effect of punishment is diminished if the community is unaware of the number and general nature of sanctions imposed. The Director of Student Conduct may, for example, arrange for publication of the statistical report in the campus press each semester.
21. Boards established pursuant to this section might include modified versions of the present “Greek” or residence hall boards.
22. It is intended that a quorum will consist of three members (out of five). The authority to appoint ad hoc boards should be broadly construed and might be especially useful, for example, when a conduct board or the Senate Committee is charged with hearing a case involving one of its own members. The final determination as to whether a panel is “unable to hear a case” should be within the discretion of the Director of Student Conduct.
23. The power of confirmation represents a significant grant of authority to the Senate Committee. Moreover, confirmation procedures will give committee members

direct contact with board members and will also allow the committee to exercise more control over the quality of Conduct Board decisions.

24. Proposed bylaws must be submitted to the Attorney General for review.
25. It could be a public embarrassment for the University to have a student charged with or convicted of a serious crime sit in judgment over other students in disciplinary proceedings. The various state criminal *Codes* are usually so broad and archaic, however, that automatic suspension or removal should not result from any violation of any law (e.g., New York makes it a criminal misdemeanor for anyone “to dance continuously in a dance contest for 12 or more hours without respite”).
26. Case referrals should not be limited to members of the “campus community.” A student who assaults another person on campus should not escape University judicial action merely because the person assaulted was a visitor (or, as in a recent case, a former student who had just withdrawn from the University).
27. The Director of Student Conduct may appoint a trained volunteer from the campus community to serve as the complainant. It would be preferable, however, to employ a “community advocate” to present all disciplinary cases.

Several measures in the *Code* are designed to restore balance in disciplinary proceedings, even in those cases in which the complainant is inexperienced with administrative adjudication:

- (a) A hearing officer may be appointed in complex or serious cases. See Part 36(o).
 - (b) The role of attorneys or advisors may be restricted. See Parts 37 and 38, and Annotation 42.
 - (c) The “disciplinary conference” procedure is designed to eliminate adversary proceedings in minor cases. See Parts 34-35 and Annotation 32.
28. Staff members may consider the mitigating factors specified in Part 12 to determine the permissible sanction to be imposed if the respondent is found guilty of charges. For example, a student involved in a minor altercation might be charged pursuant to Part 10(a), but referred to a disciplinary conference, thereby precluding the possibility of expulsion or suspension for the alleged misconduct.
 29. On April 4, 2011, the United States Department of Education, Office of Civil Rights issued a “significant guidance document” to provide universities with information to assist them in meeting their obligations under Title IX of the Education Amendments of 1972 (“Title IX”). This document is known as the “OCR Dear Colleague Letter”. According to the OCR Dear Colleague Letter, Title IX requires that the burden of proof in sexual harassment cases, including sexual assault, be “preponderance of the evidence.” Prior to the issuance of the

OCR Dear Colleague Letter, the burden of proof under the Code was “clear and convincing evidence”. According to the OCR Dear Colleague Letter, Title IX also requires that both parties in disciplinary hearings in sexual harassment cases, including sexual assault, be provided the same appeal rights, if any.

30. "Clear and convincing" means "the evidence should be 'clear' in the sense that it is certain, plain to the understanding and unambiguous, and 'convincing' in the sense that it is so reasonable and persuasive as to cause [one] to believe it." *Wills v. State of Maryland*, 329 Md. 370, 374 (1993), quoting Maryland Civil Practice Jury Instruction Section 1:8b (1984). It does not call for "unanswerable" or "conclusive" evidence. *Attorney Grievance Commission v. Harris*, 366 Md. 376, 389 (2001). To be clear and convincing means that it is substantially more likely than not that the allegations are in fact true but that it "need not be established with absolute certainty". *Vogel v. State*, 315 Md. 458, 473 (1989). The burden is "more than a mere preponderance of the evidence [the burden of proof in ordinary civil cases] but not beyond a reasonable doubt [the standard in criminal cases]". *Berkey v. Delia*, 287 Md. 302, 319-20 (1980).
31. "Preponderance of the evidence" means it is "more likely than not" that the violation occurred as alleged. To meet a burden of proof by a preponderance of the evidence, means that "the scales tipped in the direction" of one of the parties. "When the scales are 'in a state of even balance,' the party with the burden of proving its case by a preponderance of the evidence loses. *Wills v. State of Maryland*, 329 Md. 370, 374 (1993), quoting *Potts v. Armour & Co.*, 183 Md 483, 490 (1944). See Maryland Civil Pattern Jury Instructions Section 1:8a (1984).
32. The hearing procedures specified at Part 35 need not be followed in disciplinary conferences. Instead a disciplinary conference would normally consist of an informal, nonadversarial meeting between the respondent and a staff member in the Office of Student Conduct. Complainants would not be required to participate, unless their personal testimony was essential to the resolution of a dispositive factual issue in the case. Documentary evidence and written statements could be relied upon, so long as respondents are given access to them in advance and allowed to respond to them at the conference. Respondents would also be allowed to bring appropriate witnesses with them and might be accompanied by a representative, who may participate in discussions, although not in lieu of participation by the respondent.

The conference procedure is designed to reduce the steady growth of unnecessary legalism in disciplinary proceedings. The worst features of the adversary system (including the concept that judicial proceedings are a “contest” to be “won by clever manipulation of procedural rules) undermine respect for the rule of law. Colleges and universities can and should be a testing ground for development of carefully reasoned alternatives to current procedural excesses in the larger society.**

Procedures comparable to the disciplinary conference (referred to as “structured conversations”) are suggested by David L. Kirp in his 1976 article “Proceduralism and Bureaucracy: Due Process in the School Setting” 38 *Stanford Law Review* 841.

The benefits of such conversations in the school setting may better be appreciated by contrasting them with the typical due process hearing. Hearings are designed to determine the facts of a particular controversy, and apply predetermined rules to the facts thus found. At that point, the function of the hearing is at an end. The wisdom of the underlying substantive rules has no relevance, nor is broader discussion of grievances generally encouraged, unless it is somehow pertinent to the dispute at hand.

Conversation knows no such limits. It too serves as a vehicle for resolving what are likely to be factually uncomplicated disputes, but it does more than that. It enables students to feel that they are being listened to and may encourage them to raise underlying grievances. It provides administrators with a relatively inexpensive vehicle for monitoring, and hence a basis for reshaping institutional relationships. The outcome of these ‘orderly thoughtful conversations’ may well be decisions different in their particulars from what might otherwise have been anticipated; repeated conversations which touch upon similar student grievances may ultimately lead disciplinarians to reassess whether control is so vital, and collaboration so improbable, as a means of assuring institutional order.

The conference procedure would not be used in any case which might result in any form of separation from the University. Accordingly, the procedure appears to meet or exceed the due process requirements set forth by the United States Supreme Court for cases involving suspensions of ten days or less. In *Goss v. Lopez* the Court held:

[W]e stop short of construing the Due Process Clause to require, countrywide, that hearings in connection with short suspensions must afford the student the opportunity to secure counsel, to confront and cross-examine witnesses supporting the charge, or to call his own witnesses to verify his version of the incident. Brief disciplinary suspensions are almost countless. To impose in each such case even truncated trial-type procedures might well overwhelm administrative facilities in many places and, by diverting resources, cost more than it would save in educational effectiveness. Moreover, further formalizing the suspension process and escalating its formality and adversary nature may not only make it too costly as a regular disciplinary tool but also destroy its effectiveness as part of the teaching process.

On the other hand, requiring effective notice and an informal hearing permitting the student to give his version of the events will provide a meaningful hedge against erroneous action. At least the disciplinarian will be alerted to the existence of disputes about facts and arguments about cause and effect. He may then determine himself to summon the accuser, permit cross-examination, and allow the student to present his own witnesses. In more difficult cases, he may permit counsel. In any event, his discretion will be more informed and we think the risk of error substantially reduced (42 L. Ed. 725, 740).

33. The case file consists of materials which would be considered “education records,” pursuant to the Family Educational Rights and Privacy Act. Personal notes of University staff members or complainants are not included.
34. Determinations made in accordance with Parts 33 and 34 are not appealable.
35. Internal subpoenas may be desirable, since cases have arisen in which complainants or respondents were unable to present an effective case due to the indifference and lethargy of potential witnesses. A student who refused to respond to a subpoena may be charged with a violation of **Part 10(p) of the Code**. The Director of Student Conduct should not approve a subpoena unless the expected testimony would be clearly relevant. Likewise, a subpoena designed to embarrass or harass a potential witness should not be authorized. The subpoena power specified here is not designed to reach documents or other materials.
36. Board members should be disqualified on a case basis only; permanent removal should be accomplished in accordance with Part 28. Board members should not be readily disqualified. The term “personal bias” involves animosity toward a party or favoritism toward the opposite party. See, generally, Davis, *Administrative Law Treatise* “Bias” Section 12.03.
37. The exclusionary rule generally does not apply to civil administrative proceedings. Furthermore, the University of Maryland is exempted by statute from the applicable portions of the Administrative Procedure Act. The Maryland Court of Appeals, however, has barred evidence from administrative proceedings where a respondent establishes that officials were improperly motivated to illegally seize the evidence. See *Sheetz v. City of Baltimore*, 315 Md. 208 (1989).
38. Testimony containing hearsay may be heard, if relevant. A final determination should not be based on hearsay alone.
39. Every statement or assertion need not be proven. For example, board members may take notice that many students commute to the University.
40. Student presiding officers are often at a disadvantage when the respondent is represented by an attorney. The proceedings might progress more rapidly and

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efficiently if a special presiding officer were appointed. Generally, a staff member in the Office of Student Conduct would be selected for such a responsibility, although other University employees with legal training might also be called upon.

41. Information pertaining to prior findings of disciplinary and residence hall violations might be reported, as well as relevant criminal convictions. Prior allegations of misconduct should not be disclosed.
42. The dynamics of a judicial hearing in a University setting are not the same as those of a courtroom. Strict adherence to the conventions of courtroom advocacy may not be in the best interest of clients in University judicial proceedings.

The presiding officer and the board advisor are authorized to take reasonable measures to maintain control over the proceedings in order to elicit relevant facts, to prevent the harassment of participants, to insure that proceedings are not disrupted and the interests of fairness are served. This may include regulating the timing, length and manner of presentations and objections, declaring recesses in the proceedings, and other appropriate actions. Presiding officers should have training and experience appropriate to the demands of the office.

Before hearings, presenters for both complainants and respondents shall be presented with a written statement approved by the Senate Committee on Student Conduct regarding their rights and obligations during hearings and the powers of the presiding officer to control behavior in hearings.

43. Punishment of one or several individuals for the acts of others should be avoided if the identities of the specific offenders can be readily ascertained.
44. Association does not require formal membership. Individuals who might reasonably be regarded as regular participants in group or organization activities may be held to be associated with the group or organization.
45. Leaders or spokespersons need not be officially designated or elected. For example, if a group or organization accepted or acquiesced in the act or statement of an individual associated with it, that individual might reasonably be regarded as a leader or a spokesman for the group or organization.
46. "Suspension" includes deferred suspension but not interim suspension or suspension which is withheld. See Annotation 6.
47. See Annotation 29.
48. Students left with a disciplinary record after a disciplinary conference may request that their record be voided, in accordance with Part 50. Denials may be appealed, pursuant to Part 53.

49. See Annotation 29.
50. The decision will be “final and conclusive” on the part of the conduct board, but will remain a recommendation to the Director of Student Conduct.
51. This Part is intended to discourage frivolous appeals. Respondents who are genuinely interested in pursuing an appeal can reasonably be expected to prepare a written brief.
52. Appellate bodies which do not give deference (i.e., a presumption of validity) to lower board decisions will distort the entire disciplinary system. Respondents would be encouraged to “test their strategy” and “perfect their technique” before lower boards, since the matter would simply be heard again before a “real” board with final authority.

Lower board members usually have the best access to the evidence, including an opportunity to observe the witnesses and to judge their demeanor. Members of appellate bodies should be especially careful not to modify a sanction or to remand or dismiss a case simply because they may personally disagree with the lower board’s decision.

The opportunity to appeal adverse decisions has not been determined to be a requirement of constitutional “due process” in student disciplinary cases.*** There is presently no legal obstacle to adopting an amendment to the Code which would eliminate the appellate system altogether.

53. Respondents who obtain information at the hearing which might lead to new evidence are required to request an adjournment rather than wait to raise the matter for the first time on appeal.
54. An arbitrary and capricious decision would be a decision “unsupported by any evidence.” The cited language has been adopted by the Federal Courts as the proper standard of judicial review, under the due process clause, of disciplinary determinations made by the state boards or agencies. *See McDonald v. Board of Trustees of the University of Illinois*, 375 F. Supp. 95, 108 (N.D. Ill., 1974).
55. See Annotation 19.
56. Voided files will be so marked, shall not be kept with active disciplinary records, and shall not leave any student with a disciplinary record.
57. Disciplinary records may be reported to third parties, in accordance with University regulations and applicable state and federal law.
58. Void records shall be treated in the manner set forth in Annotation 56.

59. The scope of review shall be limited to the factors specified at Part 51. An inquiry into the initial determination of guilt or innocence is not permitted. For example, when considering the “nature” of the violation, pursuant to Part 51 (c), it is to be assumed that the violation occurred and that the respondent was responsible for it.
60. Some discretion must be retained to void even “permanent” disciplinary records. It may be unnecessary, for example, to burden a graduating senior with a lifelong stigma for an act committed as a freshman. Social norms also change rapidly. “Unacceptable” conduct in one generation may become permissible and commonplace in the next.
- * See the procedures for mandatory medical withdrawal developed by the Vice President for Student Affairs
- ** See Macklin Fleming, *The Price of Perfect Justice*: “in our pursuit of . . . perfectibility, we necessarily neglect other elements of an effective procedure, notably the resolution of controversies within a reasonable time at a reasonable cost, with reasonable uniformity . . . we impair the capacity of the legal order to achieve the basic values for which it is created, that is, to settle disputes promptly and peaceably, to restrain the strong, to protect the weak, and to conform the conduct of all the settled rules of law.”
- *** See the due process standard set forth in *Dixon v. Alabama*, 294 F.2nd 150, 158-159 (Fifth Cir., 1961), Cert. den 368 U.S. 930.